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No. 74-1349

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

LOCAL 862, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *Petitioner*

v.

FORD MOTOR COMPANY AND DOLORES MARIE MEADOWS,

PETITIONER'S REPLY IN SUPPORT OF CERTIORARI

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The Ford Motor Company's suggestion that this Court postpone review of a remedial alternative disregarded by the Fifth Circuit in *Franks* and by the Sixth Circuit in this case, could irrevocably prejudice rights of employees and the development of Title VII law. If this Court should affirm in *Franks* then it is the "discriminatee" employees who lose. On the other hand, if this Court reverses *Franks* and merely grants retroactive seniority, then it is the "incumbent" employees who are prejudiced. In either instance, for lack of consideration of a remedial alternative which

protects both groups, some of the employees would be irrevocably injured.

Accordingly, there is nothing to the Ford Motor Co. plea that the issue should be dismissed as "interlocutory," for by that means the remedy we propose may be precluded by this Court's disposition in *Franks*. Nor can review be foreclosed by the failure of the court below to consider the "front pay" solution in its review of the seniority issue, for after this Court has decided *Franks* it would be too late to resuscitate the remedy which preserves the fair seniority claims of both the discriminatees and the incumbent workers.

Finally, it remains clear that the Union has every proper interest to present the issue to this Court. The Company has not effectively answered our demonstration (Pet. p. 10, n. 3) that the Union was captioned and given the status of a party in the proceedings below. In any event, this Court's *Banks* and *Hunter* precedents would clearly authorize the grant of leave for the filing of the pending petition. As the court below itself recognized (see Pet. p. 8), in the disposition of the pending seniority question "intervention should be allowed from appropriate representatives" of the employees likely to be affected. There is no more appropriate representative of both the discriminatee employees and the incumbent workers than petitioner—the Union which is their statutory bargaining representative.

We are not surprised by the Company's zeal to prevent this Court's consideration of a remedy whose burden will fall on the wrongdoing employer rather than his workers. But we continue to submit that review should be granted for consideration of another and

better solution to the seniority rights problem pending in *Franks*.

Respectfully submitted,

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